

In The Matter Of:

*In The Matter Of
Proposed Rule 119*

September 24, 2019

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Original File 190924 Rule 119.prm

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ARKANSAS INSURANCE DEPARTMENT

HEARING

IN THE MATTER OF
PROPOSED RULE 119
"Multiple-Employer Welfare Benefits Plans"

HONORABLE BILL LACY, COMPLIANCE MANAGER
AND HEARING OFFICER

HEARING PROCEEDINGS

September 24, 2019

at 10:00 A.M.

APPEARANCES

ON BEHALF OF THE DEPARTMENT:

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INDEX

STYLE AND NUMBER. 1

APPEARANCES 1

CAPTION. 3

PROCEEDINGS 4

PROCEEDINGS CONCLUDED. 19

COURT REPORTER'S CERTIFICATE 20

EXHIBITS

FROM THE DEPARTMENT:

Exhibit 1 - Designation of Hearing Officer 11

Exhibit 2 - Copy of Proposed Rule 119-Unsigned. 11

Exhibit 3 - Arkansas Insurance Department Notice of
Public Hearing 8/13/19 11

Exhibit 4 - Ltr to Greg Sterne with the Arkansas Dem
Gaz, re Notice of Publication. 11

Exhibit 5 - Email to Insurance Industry re Proposed
Rule 119. 11

Exhibit 6 - Ltr to Donna Davis of Arkansas Legislative
Counsel and Arkansas Bureau of Legislative
Research 8/13/19 11

Exhibit 7 - Legislative Counsel Questionnaire and
Impact Statement 11

Exhibit 8 - Economic Impact Statement. 11

Exhibit 9 - Rule Summary 11

Exhibit 10 - Ltr to Secretary of State 8/13/19 11

Exhibit 11 - Ltr to Sara Farris, Office of Attorney
General 8/13/19. 11

Exhibit 12 - Ltr to Arkansas State Library 11

Exhibit 13 - Ltr to Pat Brown, Office of Economic

Development Commission 11

Exhibit 14 - Public Comments. 11

Exhibit 15 - Rule Edits Made During Comment Period. . 11

Exhibit 16 - Forms for Rule. 11

Exhibit 17 - Email to Commissioner Kerr 7/22/19 . . . 11

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

CAPTION

PROCEEDINGS in the above-styled and numbered cause on the 24th day of September, 2019, before Tiffanie N. Harrison, Arkansas Supreme Court Certified Court Reporter #757, at 10:00 a.m., in the hearing room of the Arkansas Insurance Department, 1200 West Third Street, Little Rock, Arkansas, pursuant to the agreement hereinafter set forth.

* * * * *

PROCEEDINGS

September 24, 2019

1
2
3 HEARING OFFICER: My name is William R.
4 Lacy. I've been appointed the Hearing Officer
5 for this Rule. I believe it is Rule 119. Are
6 there any appearances by the Department?

7 MR. RAND: Yes, Mr. Hearing Officer. This
8 is Booth Rand, Managing Attorney at the
9 Insurance Department. I have Melissa Grisham,
10 who is watching. I'm going to be doing the
11 presentation.

12 HEARING OFFICER: Okay. Thank you. Is
13 there anyone here, to appear on behalf of
14 anyone else, other than those who might
15 testify?

16 (No audible responses given.)

17 HEARING OFFICER: All righty. Mr. Rand, I
18 will turn it over to you.

19 MR. RAND: Thank you, Mr. Hearing Officer.
20 We have some exhibits we'd like to admit for
21 the administrative record, for Rule 119. The
22 first exhibit, is the Designation of Hearing
23 Officer. The Commissioner has designated you
24 as Hearing Officer, dated September 24, 2019.
25 That is Exhibit 1. Exhibit 2, is a copy of the

1 filed Rule with the Bureau of Legislative
2 Research. Exhibit 3, is a copy of the Arkansas
3 Insurance Department's Notice of Public
4 Hearing. It is the cover letter. We sent it
5 out to interested parties, and use that to
6 provide information, including the Rule, to
7 people who want to get notice of our rules and
8 regulations.

9 Exhibit 4, is the cover letter, to the
10 Arkansas Democrat Gazette, dated August 13,
11 2019, and in Exhibit 4 -- Exhibit 4 contains
12 the newspaper notice, providing notice to the
13 public, about the date of today's hearing, and
14 the nature of the hearing. It provides info to
15 the public to access and review the rule, and
16 to make public comments, and submit those to
17 us.

18 As you know, Mr. Hearing officer, under the
19 APA, we're required to provide public notice
20 for our rules, to run three consecutive days.
21 In Exhibit 4, there is a receipt or billing
22 information, from the Arkansas Democrat
23 Gazette, showing that we had ran, on August
24 15th, August 16th, and August 17th, a copy of
25 the actual language in Exhibit 4, describing

1 the date of today's hearing, September 24,
2 2019, at 10 AM, to discuss Rule 119, Multiple
3 Employer Welfare Benefit Plans.

4 Exhibit 5 is -- as you know, Mr. Hearing
5 Officer, we distribute through electronic
6 information, for those who have signed up to
7 receive copies of our rules. Exhibit 5 is a
8 copy of the notice, that was sent out by the
9 legal division, which included a copy of the
10 link that people can access, to review the
11 Rule. That is typically something we do after
12 we file the BLR.

13 Exhibit 6, is the cover letter, that we
14 sent to Donna Davis at the Arkansas Legislative
15 Council. And in Exhibit 6, or after Exhibit 6,
16 we submitted to BLR, and the Legislative
17 Council, a copy of all their required forms for
18 promulgation of the Rule. Exhibit 7 is their
19 Legislative Council questionnaire, and
20 financial impact statement. Exhibit 8 is the
21 economic impact statement. Exhibit 9, is the
22 rule summary.

23 Exhibit 10, is a courtesy copy letter to
24 the Secretary of State indicating we're filing
25 this Rule. Exhibit 11, is another courtesy

1 copy sent to the Attorney General's Office,
2 providing them with a copy of the rule, for
3 comments that the AG's office might have to our
4 Rule. Exhibit 12, is another filing that we
5 made with various state agencies, including
6 Arkansas State Library, related to the Rule.

7 Exhibit 13, is a letter we sent to the
8 Arkansas Economic Development Commission, for
9 comments that they may make. I think you and I
10 have talked a bit about this. On Exhibit 13,
11 there is a typographical error in the body of
12 the letter referring to this being a Pharmacy
13 Benefits Managers Regulation, although that's
14 not what was submitted to ADC. We have
15 corrected that, sent a letter to Ms. Brown at
16 the ADC for comments that she might want to
17 make, related to the Rule. I have not received
18 any.

19 Exhibit 14, is essentially a folder, in
20 which we collect public comments made to the
21 Rule, during the public comments phase. We had
22 received three comments, I believe. One is
23 from Mr. Mark Meadors, with BXS Insurance, in
24 favor of the rule. I'm not going to read this
25 letter. He's here, if he wants to testify.

1 It's in favor of the rule, essentially. We
2 also received a letter from Arkansas Blue Cross
3 and Blue Shield, largely in favor of the Rule.
4 They are here to make comments if they want to.
5 The other comment, is from an organization led
6 by Josh Archambault. Looks like it's a
7 national organization.

8 That OSP, they've made several comments,
9 and suggestions, and fixes, and edits.
10 Unfortunately, I got this about 9 o'clock this
11 morning, so I have not had a chance to review
12 each of these suggested changes, or edits. OSP
13 is largely in favor of the Rule that we have
14 proposed, Mr. Hearing Officer. They do make
15 several suggestions. Just looking at some of
16 those quickly, we agree with, and we'll
17 certainly advise the Commissioner to adopt --
18 some of them we have some questions about, but
19 again, I just got this about 8:45. Something
20 the Commissioner will review, as well as the
21 other comments. Those are all the comments
22 that I have received, relative to the Rule.

23 Exhibit 15 is a copy of edits that I have
24 made to the filed Rule. And I will go over
25 those, when I present the Rule, or after I

1 present the Rule. I have it in markup, and I
2 will explain what I have changed. Exhibit 16,
3 are all the forms that we had to create for new
4 applications. There are approximately four,
5 and they are consistent with the language of
6 the requirements of the Rule, and I want to
7 thank our staff for putting that together this
8 week. And so, Exhibit 16, will be exhibits
9 made with the Rule, for MEWA applicants to fill
10 out when they file their Certificates of
11 Authority.

12 Another exhibit I'd like to enter into the
13 record, is the Governor's Office authorization
14 dated July 22nd from Andres Rose, who approved
15 the Department's proposed rule for MEWA. I'd
16 like to go ahead and make that an exhibit, and
17 add that to the record. At this time, those
18 are all the exhibits I would like to admit, and
19 move that they be admitted into the
20 administrative record.

21 HEARING OFFICER: Okay. Without objection,
22 they will be admitted, with the understanding
23 that on Exhibit 12 there'll be a slightly
24 different letter, but the original letter under
25 12 was sent out in plenty enough time, with a

1 copy of the Rule, so this is just to clear up
2 the record on that. And then, on 13, you have
3 some exhibits that weren't in this book. So
4 they will all be admitted.

5 (EXHIBIT NOS. 1-17 ADMITTED)

6 MR. RAND: Thank you. I'll explain the
7 Rule. So a little background, we've been
8 working on this rule for about a year and a
9 half. The Arkansas Insurance Code pertaining
10 to self-funded multiple employer welfare
11 arrangement, in Arkansas Code 23-92-101, has
12 approximately, since about 1985-1986, permitted
13 the Insurance Commissioner, or actually
14 required the Insurance Commissioner to issue a
15 Rule to establish requirements for self-funded
16 MEWAs.

17 Unfortunately, we have never issued a rule
18 to explain to self-funded employers, how to
19 form a MEWA on a self-funded basis. And I
20 think over the last 10 years, approximately two
21 or three times a year, I get interested
22 employers, and brokers, wanting to form a self-
23 funded MEWA arrangement. And when they look at
24 23-92-101 they will see that that statute
25 requires the Commissioner to adopt rules,

1 relating to MEWA trusts and MEWA arrangements
2 that are not fully insured. And the authority
3 to issue a rule, as I indicated in the rule, is
4 very broad. The Commissioner is given
5 authority to issue rules related to forms,
6 rates, fees, and so on, reporting requirements,
7 stop loss insurance. All the things that we
8 ultimately drafted in this rule. The statute
9 certainly has always historically authorized
10 the Commissioner to implement. He has not, but
11 whoever the Commissioners have been over the
12 last 20 or 25 years.

13 So it's been frustrating for the Department
14 that for businesses that want to self fund,
15 they were really given no instructions on how
16 to do so through a rule. And that has gone on
17 for quite some time. The only alternative
18 self-funded plans have, in the absence of the
19 rule, is essentially to get a Certificate of
20 Authority, equivalent to an HMO, which is just
21 cost prohibitive.

22 So we decided last year, or a year and a
23 half ago, Ryan, James and I, and others, to
24 look around the country, and look at what other
25 states are adopting for self-funded MEWA

1 administrations in requirements and financial
2 solvency requirements. How they do it. And we
3 literally looked at every state version of MEWA
4 laws that they had. Going on at this time,
5 President Trump was promoting the development
6 of association health plans. So it was really
7 coincidental, with us not really intending to
8 be working in lockstep and jump with his
9 administration. It just so happened, that we
10 were already working on a MEWA rule.

11 So we looked around the country, Mel
12 Henderson, and Dave Dylan, looked at what other
13 states were doing. Our concern was that we
14 established rule requirements, that ensure, or
15 hopefully ensure that these are financially
16 solvent, and provide financial requirements
17 that will protect the public and medical
18 providers, to make sure that we don't have
19 happen, what happened with MEWAs in the mid-
20 80s. Many of those failed across the country.

21 So our goal was to come up with the best
22 financial standards, in a chassis, if you will,
23 for the self-funded employer plans to
24 construct, and do it in a way, where they're
25 protected, and hopefully everybody gets

1 financially safe, self-funded MEWA plan. These
2 are not protected by the guarantee fund. They
3 are not going to be protected by the guarantee
4 fund, after we publish this rule, or promulgate
5 it, so it's imperative that we develop these
6 requirements that we have.

7 So we looked around, and we liked the Texas
8 MEWA requirements. The proposed rule, Mr.
9 Hearing Officer, is essentially adopting what
10 Texas has in their requirements, for MEWAs in
11 Texas. It is our understanding, that the MEWA
12 activity in Texas is very active. We've
13 reached out to various law firms and regulators
14 about these requirements. Essentially what
15 Texas requires, and what we propose to require
16 is cash reserves, and approximately 20 percent
17 projected contributions. There's 120 percent
18 stop loss in the aggregate in individuals.
19 There are financial bonds, fidelity bond,
20 contributions was adequate.

21 There also is a required independent
22 actuarial opinion that has to be submitted and
23 reviewed by the Insurance Department, about the
24 proposed plan. So we're going to have an
25 actuary that's to certify that the plan is

1 going to be sound. And again, the stop loss
2 requirements we believe are more than adequate,
3 125 percent of aggregate specific claims.

4 There is a host of financial protection,
5 reporting requirements, including submitting
6 annual statements after each year end. Again,
7 for consumer protection, the MEWAs are
8 prohibited from discriminating on employees due
9 to health factors. And more importantly than
10 anything, I think one of the most important
11 requirements that we have, is that the MEWA
12 that we authorize here, will be subject to the
13 same medical mandates for coverage, and medical
14 laws apply to medical providers, just like any
15 other large group fully insured plans. And I
16 know that the medical providers and hospital
17 associations have been leery about these, being
18 able to avoid major medical mandates, and laws
19 that the fully insured plans have to comply
20 with, but this rule makes them comply with
21 those.

22 So there are a variety of other consumer
23 protections, but most of this is essentially
24 financial. The proposed rule, when we filed
25 it, Mr. Hearing Officer -- and I'm going to go

1 through the changes in Exhibit -- well the last
2 exhibit. Changes that I've made or edits in
3 Exhibit 15, which are changes that I made --
4 that we had to make, during the comment period.

5 And let's just look at the one I want to
6 talk about first. The effective date that we
7 proposed was 1/1/2020. And I had suggested to
8 the Commissioner to change that, in these
9 edits, to say, "The rules effective after
10 review and approval by the Arkansas Legislative
11 Council, 10 days after filing of the approval,
12 with the Arkansas Secretary of State." We had
13 to strike out January 1. The reason why, is we
14 believe that we may be able to get this rule
15 out, approximately, where it could go into
16 effect, in late November, or early December,
17 for any MEWA who is interested in trying to get
18 1/1 or get an earlier application in. So
19 trying to speed this up as fast as I can, but I
20 can't control, ultimately, when the exact date
21 is.

22 We certainly want to make it a little
23 faster than 1/1, but it's not going to be --
24 probably it's going to be early December. We
25 are not going to be able to get on the

1 Legislative calendar for review, next month, so
2 we'll have to wait until November, to get that
3 review. So it's not a huge improvement in
4 time, but it's about a month faster with this
5 proposed language.

6 The other proposed edit in that exhibit --
7 in the rule, are on page 4 and 5. And in that
8 section 5, I have stricken what was proposed,
9 on forms. All I did there was just make that
10 consistent with the forms that we adopted.
11 There's nothing controversial, or significant
12 about that.

13 The other proposed change, the medical
14 society and medical providers, on page 13, of
15 Exhibit 15, the -- and I just explained this.
16 We stated "Multiple employer welfare
17 arrangements shall provide medical benefits
18 services and network rights." And I added the
19 phrase, "and comply with all the laws and rules
20 as are mandated upon fully insured large group
21 plans." The question we got was without that
22 addition, would these entities have to comply
23 with our prior authorization laws, or laws that
24 aren't necessarily requiring a coverage of a
25 medical benefit, but which are a medical

1 provider mandated sort of protocol. And the
2 answer is "yes". We want these plans to be
3 subject to the exact same requirements, that
4 apply to medical providers, that large group
5 plans have. So I think that has satisfied the
6 medical society. Although, they're here. They
7 can say whether it has or not.

8 And so those are the proposed changes that
9 we got, and that's an explanation of the rule,
10 and I'll be glad to answer any questions that
11 you might have.

12 HEARING OFFICER: I have no questions. Does
13 anyone have any public statements they'd like
14 to make?

15 (No audible responses given.)

16 HEARING OFFICER: Mr. Rand, do you have
17 anything else?

18 MR. RAND: I'm waiting on Pat Brown, at the
19 Arkansas Economic Development Commission, to
20 call me back on her review of the proposed
21 rule. I think she should be emailing me, or
22 contacting me at any moment. So I would just
23 suggest that we keep the record open, until
24 close of business today. I'd like to visit
25 with her, and see if she has any concerns. I

1 would just suggest that we keep it open, just
2 in case they've got some issues with it,
3 although I don't think they would.

4 HEARING OFFICER: Okay. The record then
5 will close today at 4:30 PM. If there's
6 nothing else, then this hearing is adjourned.
7 Thank you.

8 (WHEREUPON, the proceedings were concluded
9 in this matter at 2:33 p.m.)

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CERTIFICATE

STATE OF ARKANSAS)
)ss
 COUNTY OF PULASKI)

I, Tiffanie Harrison, CCR, Certified Stenomask Reporter before whom the foregoing testimony was taken, do hereby certify that the witnesses were duly sworn by me; that the testimony of said witnesses were taken by me and was thereafter reduced to typewritten form under my supervision; that the hearing transcript is a true and correct record of the testimony given by said witnesses; that I am neither counsel for, related to, nor employed by the parties to the action in which this hearing was held, and further, that I am not a relative or employee of any attorney or counsel employed by the parties hereto, nor financially interested in the outcome of this action.

I FURTHER CERTIFY, that I have no contract with the parties within this action that affects or has a substantial tendency to affect impartiality, that requires me to relinquish control of an original hearing transcript or copies of the transcript before it is certified and delivered to the custodial attorney, or that requires me to provide any service not made available to all parties to the action.

WITNESS MY HAND AND SEAL this 27th day of September, 2019.

TIFFANIE N. HARRISON
 Arkansas State Supreme Court
 Certified Court Reporter #757

	agree (1) 9:16	authorization (2) 10:13;17:23	18:20	construct (1) 13:24
A	ahead (1) 10:16	authorize (1) 15:12	can (3) 7:10;16:19;18:7	consumer (2) 15:7,22
able (3) 15:18;16:14,25	alternative (1) 12:17	authorized (1) 12:9	can't (1) 16:20	contacting (1) 18:22
absence (1) 12:18	although (3) 8:13;18:6;19:3	avoid (1) 15:18	case (1) 19:2	contains (1) 6:11
access (2) 6:15;7:10	always (1) 12:9	B	cash (1) 14:16	contributions (2) 14:17,20
across (1) 13:20	Andres (1) 10:14	back (1) 18:20	certainly (3) 9:17;12:9;16:22	control (1) 16:20
active (1) 14:12	annual (1) 15:6	background (1) 11:7	Certificate (1) 12:19	controversial (1) 17:11
activity (1) 14:12	APA (1) 6:19	benefit (1) 11:19	Certificates (1) 10:10	copies (1) 7:7
actual (1) 6:25	appear (1) 5:13	basis (1) 11:19	certify (1) 14:25	copy (11) 5:25;6:2,24;7:8,9, 17,23;8:1,2;9:23;11:1
actually (1) 11:13	appearances (1) 5:6	behalf (1) 5:13	chance (1) 9:11	corrected (1) 8:15
actuarial (1) 14:22	applicants (1) 10:9	Benefit (2) 7:3;17:25	change (2) 16:8;17:13	cost (1) 12:21
actuary (1) 14:25	application (1) 16:18	Benefits (2) 8:13;17:17	changed (1) 10:2	Council (4) 7:15,17,19;16:11
ADC (2) 8:14,16	applications (1) 10:4	best (1) 13:21	changes (5) 9:12;16:1,2,3;18:8	country (3) 12:24;13:11,20
add (1) 10:17	apply (2) 15:14;18:4	billing (1) 6:21	chassis (1) 13:22	courtesy (2) 7:23,25
added (1) 17:18	appointed (1) 5:4	bit (1) 8:10	claims (1) 15:3	cover (3) 6:4,9;7:13
addition (1) 17:22	approval (2) 16:10,11	BLR (2) 7:12,16	clear (1) 11:1	coverage (2) 15:13;17:24
adequate (2) 14:20;15:2	approved (1) 10:14	Blue (2) 9:2,3	close (2) 18:24;19:5	create (1) 10:3
adjourned (1) 19:6	approximately (5) 10:4;11:12,20; 14:16;16:15	body (1) 8:11	Code (2) 11:9,11	Cross (1) 9:2
administration (1) 13:9	Archambault (1) 9:6	bond (1) 14:19	coincidental (1) 13:7	D
administrations (1) 13:1	aren't (1) 17:24	bonds (1) 14:19	collect (1) 8:20	date (4) 6:13;7:1;16:6,20
administrative (2) 5:21;10:20	Arkansas (12) 6:2,10,22;7:14;8:6, 8;9:2;11:9,11;16:10, 12;18:19	book (1) 11:3	comment (2) 9:5;16:4	dated (3) 5:24;6:10;10:14
admit (2) 5:20;10:18	around (3) 12:24;13:11;14:7	Booth (1) 5:8	comments (11) 6:16;8:3,9,16,20,21, 22;9:4,8,21,21	Dave (1) 13:12
admitted (4) 10:19,22;11:4,5	arrangement (2) 11:11,23	broad (1) 12:4	Commission (2) 8:8;18:19	Davis (1) 7:14
adopt (2) 9:17;11:25	arrangements (2) 12:1;17:17	brokers (1) 11:22	Commissioner (9) 5:23;9:17,20;11:13, 14,25;12:4,10;16:8	days (2) 6:20;16:11
adopted (1) 17:10	association (1) 13:6	Brown (2) 8:15;18:18	Commissioners (1) 12:11	December (2) 16:16,24
adopting (2) 12:25;14:9	associations (1) 15:17	Bureau (1) 6:1	comply (4) 15:19,20;17:19,22	decided (1) 12:22
advise (1) 9:17	Attorney (2) 5:8;8:1	business (1) 18:24	concern (1) 13:13	Democrat (2) 6:10,22
AG's (1) 8:3	audible (2) 5:16;18:15	businesses (1) 12:14	concerns (1) 18:25	Department (4) 5:6,9;12:13;14:23
again (3) 9:19;15:1,6	August (4) 6:10,23,24,24	BXS (1) 8:23	concluded (1) 19:8	Department's (2) 6:3;10:15
agencies (1) 8:5	Authority (4) 10:11;12:2,5,20	C	consecutive (1) 6:20	describing (1) 6:25
aggregate (2) 14:18;15:3		calendar (1) 17:1	consistent (2) 10:5;17:10	designated (1)
ago (1) 12:23		call (1)		

5:23 Designation (1) 5:22 develop (1) 14:5 Development (3) 8:8;13:5;18:19 different (1) 10:24 discriminating (1) 15:8 discuss (1) 7:2 distribute (1) 7:5 division (1) 7:9 don't (2) 13:18;19:3 Donna (1) 7:14 drafted (1) 12:8 due (1) 15:8 during (2) 8:21;16:4 Dylan (1) 13:12	ensure (2) 13:14,15 enter (1) 10:12 entities (1) 17:22 equivalent (1) 12:20 error (1) 8:11 essentially (6) 8:19;9:1;12:19; 14:9,14;15:23 establish (1) 11:15 established (1) 13:14 everybody (1) 13:25 exact (2) 16:20;18:3 exhibit (35) 5:22,25,25;6:2,9,11, 11,21,25;7:4,7,13,15, 15,18,20,21,23,25; 8:4,7,10,19;9:23;10:2, 8,12,16,23;11:5;16:1, 2,3;17:6,15 exhibits (4) 5:20;10:8,18;11:3 explain (3) 10:2;11:6,18 explained (1) 17:15 explanation (1) 18:9	14:19;15:4,24 financially (2) 13:15;14:1 firms (1) 14:13 first (2) 5:22;16:6 fixes (1) 9:9 folder (1) 8:19 form (2) 11:19,22 forms (5) 7:17;10:3;12:5; 17:9,10 four (1) 10:4 frustrating (1) 12:13 fully (4) 12:2;15:15,19; 17:20 fund (3) 12:14;14:2,4 funded (1) 11:23	HEARING (22) 5:3,4,7,12,17,19,22, 24;6:4,13,14,18;7:1,4; 9:14;10:21;14:9; 15:25;18:12,16;19:4, 6 Henderson (1) 13:12 historically (1) 12:9 HMO (1) 12:20 hopefully (2) 13:15,25 hospital (1) 15:16 host (1) 15:4 huge (1) 17:3	5:9;6:3;8:23;11:9, 13,14;12:7;14:23 insured (4) 12:2;15:15,19; 17:20 intending (1) 13:7 interested (3) 6:5;11:21;16:17 into (3) 10:12,19;16:15 issue (3) 11:14;12:3,5 issued (1) 11:17 issues (1) 19:2 It's (8) 9:1,6;12:13;14:5; 16:23,24;17:3,4
E	F	G	I	J
earlier (1) 16:18 early (2) 16:16,24 economic (3) 7:21;8:8;18:19 edit (1) 17:6 edits (5) 9:9,12,23;16:2,9 effect (1) 16:16 effective (2) 16:6,9 electronic (1) 7:5 else (3) 5:14;18:17;19:6 emailing (1) 18:21 employees (1) 15:8 Employer (4) 7:3;11:10;13:23; 17:16 employers (2) 11:18,22 end (1) 15:6 enough (1) 10:25	factors (1) 15:9 failed (1) 13:20 fast (1) 16:19 faster (2) 16:23;17:4 favor (4) 8:24;9:1,3,13 fees (1) 12:6 fidelity (1) 14:19 file (2) 7:12;10:10 filed (3) 6:1;9:24;15:24 filing (3) 7:24;8:4;16:11 fill (1) 10:9 financial (7) 7:20;13:1,16,22;	Gazette (2) 6:10,23 General's (1) 8:1 gets (1) 13:25 given (4) 5:16;12:4,15;18:15 glad (1) 18:10 goal (1) 13:21 Governor's (1) 10:13 Grisham (1) 5:9 group (3) 15:15;17:20;18:4 guarantee (2) 14:2,3	I'd (3) 10:12,15;18:24 I'll (2) 11:6;18:10 I'm (4) 5:10;8:24;15:25; 18:18 I've (2) 5:4;16:2 impact (2) 7:20,21 imperative (1) 14:5 implement (1) 12:10 important (1) 15:10 importantly (1) 15:9 improvement (1) 17:3 included (1) 7:9 including (3) 6:6;8:5;15:5 independent (1) 14:21 indicated (1) 12:3 indicating (1) 7:24 individuals (1) 14:18 info (1) 6:14 information (3) 6:6,22;7:6 instructions (1) 12:15 Insurance (8)	James (1) 12:23 January (1) 16:13 Josh (1) 9:6 July (1) 10:14 jump (1) 13:8
			K	
				L
				Lacy (1) 5:4 language (3) 6:25;10:5;17:5 large (3) 15:15;17:20;18:4 largely (2) 9:3,13 last (4) 11:20;12:12,22; 16:1 late (1) 16:16 law (1) 14:13 laws (6) 13:4;15:14,18; 17:19,23,23 led (1) 9:5 leery (1) 15:17

<p>legal (1) 7:9 Legislative (6) 6:1;7:14,16,19; 16:10;17:1 let's (1) 16:5 letter (11) 6:4,9;7:13,23;8:7, 12,15,25;9:2;10:24,24 Library (1) 8:6 liked (1) 14:7 link (1) 7:10 literally (1) 13:3 little (2) 11:7;16:22 lockstep (1) 13:8 look (4) 11:23;12:24,24; 16:5 looked (4) 13:3,11,12;14:7 looking (1) 9:15 Looks (1) 9:6 loss (3) 12:7;14:18;15:1</p>	<p>25;18:4,6 Mel (1) 13:11 Melissa (1) 5:9 MEWA (14) 10:9,15;11:19,23; 12:1,1,25;13:3,10; 14:1,8,11;15:11; 16:17 MEWAs (4) 11:16;13:19;14:10; 15:7 mid- (1) 13:19 might (4) 5:14;8:3,16;18:11 moment (1) 18:22 month (2) 17:1,4 more (2) 15:2,9 morning (1) 9:11 most (2) 15:10,23 move (1) 10:19 Multiple (3) 7:2;11:10;17:16</p>	<p>Office (3) 8:1,3;10:13 OFFICER (17) 5:3,4,7,12,17,19,23, 24;6:18;7:5;9:14; 10:21;14:9;15:25; 18:12,16;19:4 One (3) 8:22;15:10;16:5 only (1) 12:17 open (2) 18:23;19:1 opinion (1) 14:22 organization (2) 9:5,7 original (1) 10:24 OSP (2) 9:8,12 others (1) 12:23 out (7) 6:5;7:8;10:10,25; 14:13;16:13,15 over (4) 5:18;9:24;11:20; 12:11</p>	<p>19:5,9 present (2) 9:25;10:1 presentation (1) 5:11 President (1) 13:5 prior (1) 17:23 probably (1) 16:24 PROCEEDINGS (2) 5:1;19:8 prohibited (1) 15:8 prohibitive (1) 12:21 projected (1) 14:17 promoting (1) 13:5 promulgate (1) 14:4 promulgation (1) 7:18 propose (1) 14:15 proposed (12) 9:14;10:15;14:8,24; 15:24;16:7;17:5,6,8, 13;18:8,20 protect (1) 13:17 protected (3) 13:25;14:2,3 protection (2) 15:4,7 protections (1) 15:23 protocol (1) 18:1 provide (4) 6:6,19;13:16;17:17 provider (1) 18:1 providers (5) 13:18;15:14,16; 17:14;18:4 provides (1) 6:14 providing (2) 6:12;8:2 Public (9) 6:3,13,15,16,19; 8:20,21;13:17;18:13 publish (1) 14:4 putting (1) 10:7</p>	<p>7:19 quickly (1) 9:16 quite (1) 12:17</p>
M	N	P		R
<p>major (1) 15:18 makes (1) 15:20 Managers (1) 8:13 Managing (1) 5:8 mandated (2) 17:20;18:1 mandates (2) 15:13,18 Many (1) 13:20 Mark (1) 8:23 markup (1) 10:1 matter (1) 19:9 may (2) 8:9;16:14 Meadors (1) 8:23 medical (13) 13:17;15:13,13,14, 16,18;17:13,14,17,25,</p>	<p>name (1) 5:3 national (1) 9:7 nature (1) 6:14 necessarily (1) 17:24 network (1) 17:18 new (1) 10:3 newspaper (1) 6:12 next (1) 17:1 NOS (1) 11:5 Notice (6) 6:3,7,12,12,19;7:8 November (2) 16:16;17:2</p>	<p>page (2) 17:7,14 parties (1) 6:5 Pat (1) 18:18 people (2) 6:7;7:10 percent (3) 14:16,17;15:3 period (1) 16:4 permitted (1) 11:12 pertaining (1) 11:9 Pharmacy (1) 8:12 phase (1) 8:21 phrase (1) 17:19 plan (3) 14:1,24,25 Plans (9) 7:3;12:18;13:6,23; 15:15,19;17:21;18:2, 5 plenty (1) 10:25 PM (2)</p>	<p style="text-align: center;">Q</p> <p>questionnaire (1)</p>	<p>ran (1) 6:23 RAND (7) 5:7,8,17,19;11:6; 18:16,18 rates (1) 12:6 reached (1) 14:13 read (1) 8:24 really (3) 12:15;13:6,7 reason (1) 16:13 receipt (1) 6:21 receive (1) 7:7 received (4) 8:17,22;9:2,22 record (7) 5:21;10:13,17,20; 11:2;18:23;19:4 referring (1) 8:12 Regulation (1) 8:13 regulations (1) 6:8 regulators (1) 14:13 related (3) 8:6,17;12:5 relating (1) 12:1 relative (1) 9:22 reporting (2) 12:6;15:5 require (1) 14:15 required (4) 6:19;7:17;11:14; 14:21 requirements (15) 10:6;11:15;12:6; 13:1,2,14,16;14:6,8, 10,14;15:2,5,11;18:3 requires (2) 11:25;14:15 requiring (1) 17:24 Research (1) 6:2</p>

reserves (1) 14:16	9:3	13:18	6:5	16:18,23
responses (2) 5:16;18:15	showing (1) 6:23	T	V	1/1/2020 (1) 16:7
review (8) 6:15;7:10;9:11,20; 16:10;17:1,3;18:20	signed (1) 7:6	talk (1) 16:6	variety (1) 15:22	10 (4) 7:2,23;11:20;16:11
reviewed (1) 14:23	significant (1) 17:11	talked (1) 8:10	various (2) 8:5;14:13	11 (1) 7:25
rights (1) 17:18	slightly (1) 10:23	testify (2) 5:15;8:25	version (1) 13:3	1-17 (1) 11:5
rightly (1) 5:17	society (2) 17:14;18:6	Texas (5) 14:7,10,11,12,15	visit (1) 18:24	119 (3) 5:5,21;7:2
Rose (1) 10:14	solvent (1) 13:16	that's (3) 8:13;14:25;18:9	W	12 (3) 8:4;10:23,25
Rule (47) 5:5,5,21;6:1,6,15; 7:2,11,18,22,25;8:2,4, 6,17,21,24;9:1,3,13, 22,24,25;10:1,6,9,15; 11:1,7,8,15,17;12:3,3, 8,16,19;13:10,14; 14:4,8;15:20,24; 16:14;17:7;18:9,21	sort (1) 18:1	there'll (1) 10:23	wait (1) 17:2	120 (1) 14:17
rules (7) 6:7,20;7:7;11:25; 12:5;16:9;17:19	sound (1) 15:1	There's (3) 14:17;17:11;19:5	waiting (1) 18:18	125 (1) 15:3
run (1) 6:20	specific (1) 15:3	they'd (1) 18:13	wants (1) 8:25	13 (5) 6:10;8:7,10;11:2; 17:14
Ryan (1) 12:23	speed (1) 16:19	they're (2) 13:24;18:6	watching (1) 5:10	14 (1) 8:19
S	staff (1) 10:7	they've (2) 9:8;19:2	way (1) 13:24	15 (3) 9:23;16:3;17:15
safe (1) 14:1	standards (1) 13:22	three (3) 6:20;8:22;11:21	we'd (1) 5:20	15th (1) 6:24
same (2) 15:13;18:3	State (5) 7:24;8:5,6;13:3; 16:12	times (1) 11:21	we'll (2) 9:16;17:2	16 (2) 10:2,8
satisfied (1) 18:5	stated (1) 17:16	today (2) 18:24;19:5	we're (2) 6:19;7:24	16th (1) 6:24
Secretary (2) 7:24;16:12	statement (2) 7:20,21	today's (2) 6:13;7:1	we'regoing (1) 14:24	17th (1) 6:24
section (1) 17:8	statements (2) 15:6;18:13	together (1) 10:7	we've (2) 11:7;14:12	1985-1986 (1) 11:12
self (1) 12:14	statute (2) 12:25;13:13	Trump (1) 13:5	week (1) 10:8	2
self- (1) 11:22	states (2) 11:24;12:8	trusts (1) 12:1	Welfare (3) 7:3;11:10;17:16	2 (1) 5:25
self-funded (8) 11:10,15,18,19; 12:18,25;13:23;14:1	stop (3) 12:7;14:18;15:1	trying (2) 16:17,19	weren't (1) 11:3	2:33 (1) 19:9
sent (7) 6:4;7:8,14;8:1,7,15; 10:25	stricken (1) 17:8	turn (1) 5:18	WHEREUPON (1) 19:8	20 (2) 12:12;14:16
September (3) 5:2,24;7:1	strike (1) 16:13	two (1) 11:20	William (1) 5:3	2019 (4) 5:2,24;6:11;7:2
services (1) 17:18	subject (2) 15:12;18:3	typically (1) 7:11	Without (2) 10:21;17:21	22nd (1) 10:14
several (2) 9:8,15	submit (1) 6:16	typographical (1) 8:11	working (3) 11:8;13:8,10	23-92-101 (2) 11:11,24
shall (1) 17:17	submitted (3) 7:16;8:14;14:22	U	Y	24 (3) 5:2,24;7:1
Shield (1)	submitting (1) 15:5	ultimately (2) 12:8;16:20	year (5) 11:8,21;12:22,22; 15:6	25 (1) 12:12
	suggest (2) 18:23;19:1	under (2) 6:18;10:24	years (2) 11:20;12:12	3
	suggested (2) 9:12;16:7	Unfortunately (2) 9:10;11:17	1	3 (1) 6:2
	suggestions (2) 9:9,15	up (4) 7:6;11:1;13:21; 16:19	1 (2) 5:25;16:13	4
	summary (1) 7:22	upon (1) 17:20	1/1 (2)	4 (6) 6:9,11,11,21,25;
	sure (1)	use (1)		

17:7 4:30 (1) 19:5				
5				
5 (4) 7:4,7;17:7,8				
6				
6 (3) 7:13,15,15				
7				
7 (1) 7:18				
8				
8 (1) 7:20 8:45 (1) 9:19 80s (1) 13:20				
9				
9 (2) 7:21;9:10				